THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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W.P.No. 1499 of 1997

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% 21-03-2006

Between:

Mr. K.Ramaseshu, Guntur

…Petitioner

A n d

The Hon'ble Labour Court, Guntur

and others

…Respondents

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! Counsel for the Petitioner: Sri P. Nageswara Sree

^ COUNSEL FOR THE RESPONDENTS: Sri P.Gopal Das

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> Head Note:

? CITATIONS:

1) 1995 (I) LLJ 395

2) 1998 (III) L.L.J. (Supp.) 858

3) 1993 (III) L.L.J. 702

4) AIR 1979 SC 1981

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THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

WRIT PETITION NO.1499 OF 1997

JUDGMENT:

The petitioner challenges the order dated 16-08-1996 passed by the Labour Court, Guntur, in M.P.No.86 of 1991, filed by the deceased, 2nd respondent. The 2nd respondent filed an application before the Labour Court, Guntur, under Section 33 C (2) of the Industrial Disputes Act, 1947 (for short the 'I.D. Act'). He pleaded that initially he was engaged as Newspaper Distribution Worker, by the father of the writ petitioner, and thereafter, under the petitioner, for about 60 years. He submitted that in July 1991, he has fallen ill and could not discharge his duties from 15-07-1991 onwards. He is said to have reported to duty, to the petitioner, on 30-07-1991.

The 2nd respondent claimed that he was unlawfully retrenched from service without paying any compensation. He claimed a sum of Rs.13,800/- on that account. Same amount was claimed towards gratuity for the entire period of his service. A sum of Rs.19,600/- was claimed towards salary for Sundays and other holidays. The 2nd respondent died while the M.P.No.86 of 1991 was pending, and respondents 3 to 11 herein were brought on record as legal representatives.

The petitioner resisted the claim, and pleaded that though the 2nd respondent worked under his father, when the agency of Newspaper Distribution, was with them; he ceased to be the employee with them, with the closure of distributorship. Objection was raised as to the maintainability of the M.P.No.86 of 1991.

A plea was taken to the effect that, even where any dues of gratuity exist, they cannot be recovered, in proceedings under Section 33 C (2). Through the impugned order, the Labour Court allowed the claim for payment of retrenchment compensation and gratuity, amounting to Rs.27,600/-. It rejected the claim of Rs.19,600/-, toward the salary for Sundays and other holidays.

Sri P.Nageswara Sree, learned counsel for the petitioner submits that an application under Section 33 C(2) of the I.D. Act is comparable to execution proceedings, and unless there exists a predetermined claim, it cannot be maintained. He contends that the 2nd respondent was not the employee of the writ petitioner and there did not exist any basis for initiation of proceedings. He further submits that the provisions of the payment of Gratuity Act, 1972, cannot be enforced under Section 33 C (2) of the I.D. Act.

Sri P.Gopal Das, learned counsel for the respondents 3 to 11, on the other hand, submits that his clients did not challenge the retrenchment as such, and the retrenchment compensation can certainly be claimed in proceedings under Section 33. He contends that the I.D. Act is a comprehensive enactment and arrears of gratuity can be claimed in the proceedings initiated under it.

The 2nd respondent filed an application under Section 33 C (2) of the I.D. Act, and made three claims against the petitioner, *viz*.,

a. retrenchment compensation of Rs.13,800/-,

b. amount payable towards gratuity of Rs.13,800/-, and

c. arrears of salary for Sundays and other holidays of Rs.19,600/-.

He submitted that he was employed with the petitioner as well as his father, for about 60 years. He specifically pleaded that he was retrenched from service with effect from 15-07-1991, without following the procedure prescribed under Section 25-F of the I.D. Act.

The 2nd respondent was examined as PW-1. He filed Ex.P-1,
a copy of the notice issued by him to the petitioner. A reply received thereto, was marked as Ex.P-2. The writ petitioner was examined as RW-1, and a person, who worked as Supervisor under him, from 1978, was examined as RW-2. The Labour Court allowed the first two items of claim, and rejected the third one. From the submissions made by the learned counsel for the parities, two questions arise for consideration in this writ petition, *viz*.,

1. Whether application under Section 33 C (2) of the I.D. Act is maintainable to challenge the retrenchment, and

2. Whether the amount payable towards gratuity can be claimed in the proceedings initiated under the I.D. Act.

From a perusal of the claim petition, submitted by the 2nd respondent, it is evident that he made a grievance about the alleged retrenchment from service, in contravention of Section 25-F of the I.D. Act. However, when it came to the question of relief, he restricted it to the one, of recovery of retrenchment compensation, and did not pray for reinstatement. In ***Municipal Corporation of Delhi, v. Ganesh and another*** the Supreme Court held that the petitions under Section 33 C (2) of the I.D. Act are in the nature of the execution proceedings. A perusal of the provision makes it clear that the entitlement of a workman to receive any amount, cannot be decided for the first time in proceedings under Section 33 C (2) of the I.D. Act. Either there must be an undisputed amount, payable to a workman, or an adjudication by an authority, before he can invoke Section 33 C (2).

It is well recognized that, retrenchment of a workman in contravention of Section 25-F of the I.D. Act, can be challenged by raising an industrial dispute under Section 10. In the State of Andhra Pradesh, it is permissible for a retrenched workman, under Section 2(a) (2) of the I.D. Act, to straightaway move the Labour Court.

The question, as to whether there existed any relationship of employer and employee, whether any retrenchment as such, has taken place at all, and if so, whether it was not preceded by notice or payment of the amounts stipulated under Section 25-F; would be put to issue, and definite findings are to be recorded in relation to them. The occasion to invoke Section 33 C (2), in relation to a

retrenchment would arise, either when the employer does not dispute the factum of non-payment of retrenchment compensation, or where the retrenchment was held to be invalid, in a set of proceedings, initiated under Section 10 of the I.D. Act. The validity or otherwise of the retrenchment cannot be decided for the first time in such proceedings.

Learned counsel for the respondents 3 to 11, placed reliance upon a judgment rendered by a Division Bench of this Court in ***A.P. State Construction Corporation Limited v. Labour Court, Hyderabad***. That was a case where the proceedings were initiated under Section 33 C (2), for recovery of the House Rent Allowance and Project Allowance, at the enhanced rate. No retrenchment was involved in that case. The objection raised by the Management, as to maintainability of the application was that, there existed dispute about the percentage of the said allowances. This Court held that mere denial of the right of a workman to receive the allowances at a particular rate by the management does not oust the jurisdiction of the Labour Court, to entertain the application under Section 33 C (2). There does not exist any comparison between the facts of this case, and those in the judgment cited above.

Reliance is placed upon the judgment of the Bombay High Court in ***Bhawsar Home Furnishers & Decorators v. Dattaram Pandurang Mistri and others***. A learned single Judge of the Bombay High Court held that the legality and validity of the retrenchment can be examined in an application under Section 33 C (2) of the Act. The relevant portion of the judgment reads as under:

> "From the evidence discussed above, it is crystal clear that the termination was proved beyond shadow of doubt, and merely because the petitioners contended that they had not terminated the services of the workmen we cannot throw away the applications preferred under Section 33 C (2) of the Act. When such a dispute if raised by an employer, it has to be looked into and resolved. It is well settled law that an application under Section 33 C (2) of the Act is maintainable where a workman claims an amount of money but such a claim has to be based on an existing right. The existing right itself should have vested in the workman either under a settlement or an award or under the provision of statute. Once the right is shown to be existing, the Labour Court has the necessary jurisdiction to entertain the application".

From this, it is evident that the Bombay High Court proceeded as though the

only issue that arises for consideration in a matter relating to termination or retrenchment is the entitlement of the workman to receive money. By adopting such logic, it is sought to be brought within the purview of Section 33 C (2). With great respect to the learned Judge, it needs to be pointed out that such a course would alter the very purport and nature of proceedings under Section 33 C (2).

As pointed above, in an industrial dispute, where the retrenchment of a workman is challenged, several questions arise for consideration, and the ultimate relief that is to be granted in such proceedings is not confined to payment of money alone.

If the retrenchment is held to be illegal, or in contravention of Section 25-F of the I.D. Act, relief of reinstatement into service, must ensue, as a matter of course. Such a relief cannot be granted under Section 33 C (2). There are several other reasons as to how the adjudication into the legality of an order, or action of retrenchment, cannot fit into adjudication under Section 33 C (2). At any rate, in view of the judgment of the Supreme Court in ***Municipal Corporation of Delhi, v. Ganesh and another*** (1 supra), the opinion expressed by the Bombay High Court does not hold good. Therefore, the action of the Labour Court in awarding retrenchment compensation to the respondents 3 to 11 does not accord with law.

One distinction, however needs to be kept in mind. Where an employee claims retrenchment compensation alone, and the employer does not dispute the factum of retrenchment and non-payment of retrenchment compensation, the corresponding amount can be recovered in proceedings under Section 33 C (2). There is nothing in the I.D. Act, which prohibits this. If there exists any dispute as to the very factum of retrenchment, no relief as such can be granted. Therefore, much would depend upon the nature of claim and purport of the defence. In cases where dispute does not exist, in the limited context, referred to above, the Labour Court can pass an order, for payment of an amount, representing the retrenchment compensation, but not any further relief, such as reinstatement of payment of back wages etc.

Coming to the second question, it hardly needs any emphasis that the Payment of Gratuity Act is a self-contained Code.

It provides for deciding the liability of an employer, to pay gratuity, and the manner of

calculation thereof. Section 8 of the Act prescribes the procedure for recovery of amount payable as gratuity. It reads as under:

> "**Section 8**: **Recovery of gratuity**:- If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon (at such rate as the Central Government may, by notification, specify,) from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.
>
> Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:
>
> Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act".

This provision does not admit of, any doubt that the only method to recover the amount of gratuity is, to approach the Controlling Authority. Section 14 of that Act gives an overriding effect upon the provisions contained in any other enactment.
In ***State of Punjab v. Labour Court, Jalandhar*** the Supreme Court in clear and categorical terms held that the amount payable towards gratuity cannot be recovered by initiating proceedings under Section 33 C (2) of the Act.

For the foregoing reasons, the writ petition is allowed, and the impugned order is set aside. The matter is remanded to the Labour Court, for the limited purpose of ascertaining, as to whether there exists any dispute, as to the retrenchment of the deceased 2nd respondent, and non-payment of retrenchment compensation.
If the answer to the said question is in the positive, necessary relief shall be granted to the respondents 3 to 11. On the other hand, if it is in the negative, it shall be open to them, to move an application under Section 2(a) (2) of the I.D. Act, if it is otherwise permissible in law.

The amount, which was paid by the petitioners in pursuance of the directions of this Court, shall not be recovered from the respondents 3 to 11, till the conclusion of the said proceedings. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.21-03-2006.

Note:

L.R. copy to be marked.

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